

APPEAL NO. 022837
DECEMBER 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 7, 2002. The hearing officer determined that: (1) the _____, compensable injury of appellant (claimant) does not extend to and include tarsal tunnel syndrome; (2) claimant had disability resulting from the compensable injury from June 22, 2001, through June 6, 2002; and (3) claimant did not have good cause for failing to submit to the designated doctor examination on January 29, 2002, therefore claimant is not entitled to temporary income benefits (TIBs) for the period from January 29 until April 11, 2002. Claimant appealed the hearing officer's determinations regarding extent of injury, disability, and entitlement to TIBs. Respondent (carrier) responded, urging affirmance.

DECISION

We affirm.

The hearing officer did not err in determining that claimant's compensable injury does not extend to and include tarsal tunnel syndrome, and that she had resulting disability from June 22, 2001, through June 6, 2002. Conflicting evidence was presented on the disputed issues. A substantial amount of medical records were submitted into evidence by the parties to support their respective positions on extent of injury and disability. Extent of injury and disability are questions of fact for the hearing officer to resolve. It was for the hearing officer to consider the evidence and determine what facts have been established. Nothing in our review of the record indicates that the hearing officer's determinations regarding extent of injury and disability are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We next turn to the hearing officer's determination that claimant did not have good cause for failing to submit to the designated doctor examination on January 29, 2002, and therefore, was not entitled to TIBs for the period from January 29 until April 11, 2002. The applicable law on this issue is contained in Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6 (Rule 130.6).

Section 408.0041(h) authorizes a carrier to suspend payment of TIBs during and for a period in which an employee fails to submit to a required designated doctor examination unless the Texas Workers' Compensation Commission (Commission) determines that the employee had good cause for failing to submit to the examination. It further provides that the Commission may order TIBs to be paid for the period for which it determines that the employee had good cause.

Rule 130.6 (b) and (c) provide that:

- (b) The designated doctor and the injured employee (employee) shall contact each other if there exists a scheduling conflict for the designated doctor appointment. The designated doctor or the employee who has the scheduling conflict must make the contact at least 24 hours prior to the appointment. The 24-hour requirement will be waived in an emergency situation (such as a death in the immediate family or a medical emergency). The rescheduled examination shall be set for a date within seven days of the originally scheduled examination unless an extension is granted by the commission's field office. Within 24 hours of rescheduling, the designated doctor shall contact the commission's field office and the insurance carrier (carrier) with the time and date of the rescheduled examination
- (c) A carrier may suspend [TIBs] if an employee, without good cause, fails to attend a designated doctor examination.
 - (1) In the absence of a finding by the commission to the contrary, a carrier may presume that the employee did not have good cause to fail to attend the examination if:
 - (A) By the day the examination was originally scheduled to occur the employee has both:
 - (i) failed to submit to the examination; and
 - (ii) failed to contact the designated doctor's office to reschedule the examination to occur no later than the later of the seventh day after the originally scheduled examination date or the doctor's first available appointment date; or
 - (B) after rescheduling the examination as provided in subsection (c)(1)(A)(ii) of this section, the employee failed to submit to the rescheduled examination.
 - (2) If, after the carrier suspends TIBs pursuant to this section, the employee submits to the designated doctor examination, the carrier shall reinitiate TIBs as of the date the employee submitted to the examination unless the report of the designated doctor indicates that the employee has reached MMI. The re-initiation of TIBs shall occur no later than the seventh day following the latter of:

- (A) the date the carrier was notified that the employee had attended the examination; or
 - (B) the date that the carrier was notified that the commission found that the employee had good cause for failure to attend the examination.
- (3) An employee is not entitled to TIBs for a period during which the carrier suspended benefits pursuant to this section unless the employee later submits to the examination and the commission finds or the carrier determines that the employee had good cause for failure to attend the examination.

Claimant testified that she missed the January 29, 2002, appointment with the designated doctor because her child was ill. Dispute Resolution Information System (DRIS) notes indicate that the designated doctor's office called the Commission on February 26, 2002, with a request to reset the appointment. On March 19, 2002, the claimant called the Commission regarding the missed appointment and the Commission called the designated doctor's office, which indicated that they wanted to "pass" on the claimant. A new designated doctor was appointed and the claimant attended the appointment on April 11, 2002. The hearing officer determined that claimant's child did become ill on January 29, 2002, and that was the reason that claimant missed the appointment. The hearing officer determined that claimant failed to timely call the designated doctor's office or the Commission after January 29, 2002, in order to reschedule the January 29, 2002, appointment with the designated doctor.

Rule 130.6(c)(1) concerns a carrier presumption regarding good cause. It provides that carrier may presume that claimant did not have good cause to fail to attend the appointment if by the day the appointment was scheduled, she both failed to submit to the examination and failed to timely reschedule the appointment to occur the later of the seventh day after the originally scheduled appointment or the doctor's first available appointment date. Rule 130.6(b) provides, in pertinent part, that if the claimant has a scheduling conflict, the claimant shall contact the designated doctor to reschedule the examination so that it takes place within seven days of the originally scheduled examination unless an extension is granted by the Commission's field office.

The hearing officer determined that while claimant had a good reason to miss the originally scheduled appointment, she failed to establish good cause for the purposes of Rules 130.6 by failing to promptly reschedule the appointment as required by that rule. Finding no abuse of discretion and no reversible error, we affirm the hearing officer's determination on this issue.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ST. PAUL GUARDIAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge